

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

ALVION PROPERTIES, INC., SHIRLEY)  
K. MEDLEY, and HAROLD M. )  
REYNOLDS, )

Plaintiffs, )

v. )

BERND H. WEBER, RAYMONDE WEBER, )  
CLAUDE J. CHAUVEAU, AMERICAN )  
GULF FINANCE CORP., ALVION )  
PARTNERS, LLC, AGF REALTY )  
SOLUTIONS, INC., TIMEDATA )  
HOLDINGS, LLC, )

Defendants. )

BERND H. WEBER, CLAUDE J. )  
CHAUVEAU, )

Counter-Claimants, )

Harold M. Reynolds, Shirley K. )  
Medley, Donald M. Medley, )  
Farmers State Bank Of Alto Pass, )  
Brad Henshaw, Allain de la )  
Motte, Elizabeth Melland, )  
Robert M. West, Melland Group, )  
LLC, )

Counter-Defendants. )

NO. 3:08-0866  
Judge Sharp/Bryant  
**Jury Demand**

TO: The Honorable Kevin H. Sharp

**REPORT AND RECOMMENDATION**

Third-party defendants Robert M. West and Allain de la Motte have filed their "Motion For Summary Dismissal Of The Case" (Docket Entry No. 630). These parties in their motion cite Rule 12(b)(2) and (3), and they attach their supporting affidavits. Therefore, the undersigned Magistrate Judge construes this motion to be one for summary judgment pursuant to Rule 56 of the Federal

Rules of Civil Procedure.

This motion is untimely. The case management order in effect in this case (Docket Entry No. 543) requires that all dispositive motions be filed no later than July 25, 2012. This motion filed by West and de la Motte was not filed until October 15, 2012, almost three months late. Moreover, these parties have neither sought leave to file this motion after the deadline nor have they offered any explanation why their motion could not have been filed timely. For these reasons, the undersigned Magistrate Judge finds that this motion must be denied.

#### **RECOMMENDATION**

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that the "Motion For Summary Dismissal" filed by third-party defendants West and de la Motte (Docket Entry No. 630) be DENIED.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can

constitute a waiver of further appeal of this Recommendation.  
Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111  
(1986).

**ENTERED** this 16th day of October 2012.

s/ John S. Bryant  
JOHN S. BRYANT  
United States Magistrate Judge